



February 23, 2016

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## ENGROSSED SENATE BILL No. 167

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DIGEST OF SB 167 (Updated February 19, 2016 10:11 am - DI 58)

**Citations Affected:** IC 23-17.

**Synopsis:** State higher education institutions. Permits a public benefit corporation to merge with a state higher education institution, without court approval, if the public benefit corporation is controlled by the state higher education institution.

**Effective:** July 1, 2016.

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### Kenley, Charbonneau, Stoops

(HOUSE SPONSORS — CHERRY, BROWN T, PORTER, KLINKER)

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January 5, 2016, read first time and referred to Committee on Appropriations.

January 25, 2016, reported favorably — Do Pass.

January 28, 2016, read second time, amended, ordered engrossed.

January 29, 2016, engrossed.

February 1, 2016, read third time, passed. Yeas 44, nays 6.

#### HOUSE ACTION

February 8, 2016, read first time and referred to Committee on Ways and Means.

February 22, 2016, amended, reported — Do Pass.

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ES 167—LS 6280/DI 73





February 23, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 167

A BILL FOR AN ACT to amend the Indiana Code concerning higher education.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 23-17-19-2, AS AMENDED BY THE  
2 TECHNICAL CORRECTIONS BILL OF THE 2016 GENERAL  
3 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2016]: Sec. 2. (a) Without the prior approval of the circuit  
5 court or superior court of the county where the corporation's principal  
6 office or, if the principal office is not located in Indiana, the  
7 corporation's registered office, is located in a proceeding that the  
8 attorney general has been given written notice, a public benefit or  
9 religious corporation may only merge with the following:  
10 (1) A public benefit or religious corporation.  
11 (2) A foreign corporation that would qualify under this article as  
12 a public benefit or religious corporation.  
13 (3) A wholly-owned foreign or domestic business or mutual  
14 benefit corporation if the public benefit or religious corporation  
15 is the surviving corporation and continues to be a public benefit  
16 or religious corporation after the merger.  
17 (4) A business or mutual benefit corporation if the following

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conditions are met:

(A) On or before the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or the fair market value of the public benefit corporation if the corporation were to be operated as a business concern are transferred or conveyed to a person who would have received the corporation's assets under ~~IC 23-17-22-6(a)(5)~~ **IC 23-17-22-5(a)(5)** and ~~IC 23-17-22-6(a)(6)~~ **IC 23-17-22-5(a)(6)** had the corporation dissolved.

(B) The business or mutual benefit corporation returns, transfers, or conveys any assets held by the business or mutual benefit corporation upon condition requiring return, transfer, or conveyance, that occurs by reason of the merger, in accordance with the condition.

(C) The merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become:

- (i) members in;
  - (ii) shareholders in; or
  - (iii) officers, employees, agents, or consultants of;
- the surviving corporation.

(D) The requirements of section 8 of this chapter are met.

**(5) A state educational institution if it is a public benefit corporation and the public benefit corporation is controlled by the state educational institution before the merger.**

(b) At least twenty (20) days before consummation of any merger of a public benefit corporation or a religious corporation under subsection (a)(4), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(c) Without the prior written consent of the attorney general or of the circuit court or superior court of the county where:

- (1) the corporation's principal office is located; or
- (2) if the principal office is not located in Indiana, the corporation's registered office is located;

in a proceeding in which the attorney general has been given notice, a member of a public benefit or religious corporation may not receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. The court shall approve the transaction if the transaction is in the public interest.



### COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 167, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 167 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 10, Nays 0

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### SENATE MOTION

Madam President: I move that Senate Bill 167 be amended to read as follows:

Page 2, between lines 9 and 10, begin a new line block indented and insert:

**"(6) The state educational institution may not invest in a privately held entity that:**

**(A) performs work or provides services that are within the scope of IC 4-13.5, IC 4-13.6, IC 5-16, IC 8-23-2-4.1, or IC 36-1-12; or**

**(B) performs work or provides services in the private sector that are similar in scope to work and services contemplated by IC 4-13.5, IC 4-13.6, IC 5-16, IC 8-23-2-4.1, or IC 36-1-12."**

(Reference is to SB 167 as printed January 26, 2016.)

KENLEY

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### COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 167, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 18.

Page 2, line 19, after "IC 23-17-19-2" insert ", AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2016 GENERAL

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ASSEMBLY,".

Page 2, line 42, strike "IC 23-17-22-6(a)(5)" and insert "**IC 23-17-22-5(a)(5)**".

Page 2, line 42, strike "IC 23-17-22-6(a)(6)" and insert "**IC 23-17-22-5(a)(6)**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 167 as reprinted January 29, 2016.)

BROWN T

Committee Vote: yeas 20, nays 0.

